



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2021-0381; FRL-8782-01-R1]

Air Plan Approval; Maine; Chapter 100 Definitions and Chapter 113 Growth Offset Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maine. This revision amends the definition of “Ozone Transport Region” in the State’s Chapter 100 Definitions Regulation and revises language in the State’s Chapter 113 Growth Offset Regulation regarding applicability of Nonattainment New Source Review in areas that, at a future date, may not be within the Ozone Transport Region. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-OAR-2021-0381 at <https://www.regulations.gov>, or via email to creilson.john@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission

(i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

<https://www.epa.gov/dockets/commenting-epa-dockets>. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square – Suite 100, Boston, MA. EPA requests that, if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID-19.

FOR FURTHER INFORMATION CONTACT: John Creilson, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 05-2), Boston, MA 02109, tel. (617) 918-1688, email creilson.john@epa.gov. **SUPPLEMENTARY INFORMATION:**

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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I. Background

On February 10 and 24, 2021, the Maine Department of Environmental Protection (ME DEP) submitted two revisions to its State Implementation Plan (SIP) consisting of an amendment to the existing Code of Maine Rules (C.M.R.) Chapter 113 Growth Offset Regulation (Chapter 113) and C.M.R. Chapter 100 Definitions Regulation (Chapter 100), respectively, both of which were previously approved into the Maine SIP.

Pursuant to section 184 of the CAA, the State of Maine is included within the Ozone Transport Region (OTR). On February 24, 2020, the State of Maine submitted a petition to the EPA under section 176A of the CAA to remove certain portions of the State from the OTR. On May 3, 2021, EPA published in the **Federal Register** a proposal to grant Maine's request. *See* 86 FR 23309. Following Maine's original February 24, 2020 CAA section 176A request, EPA notified ME DEP that amending the definition of "Ozone Transport Region" in the Department's Chapter 100 Definitions Regulation was also necessary to facilitate processing of the Department's petition because the current SIP-approved definition includes language referring to the entire state of Maine as being within the OTR. The State submitted a revision to its existing SIP-approved OTR definition on February 24, 2021. Maine submitted on March 23, 2021 a clarification letter, instructing EPA to retain all existing language in the SIP-approved version of Chapter 100, except that the existing definition of "Ozone Transport Region" should be removed and be replaced by the updated definition of "Ozone Transport Region."

Additionally, as a result of Maine's OTR opt-out request, language in Chapter 113 of the approved SIP was required to be updated. The State submitted a revision to the existing SIP-approved Chapter 113 sections 1 and 2 on February 10, 2021. ME DEP's March 23, 2021 clarification letter similarly instructs EPA to retain all existing language already in the SIP-approved version of Chapter 113, except for the updated language included in the State's SIP submittal.

II. Summary and Evaluation of State Submittal

a. Chapter 100

The proposed change amends the definition of the “Ozone Transport Region” in the Chapter 100 Definitions Regulation by changing the last sentence from “...For the State of Maine, the Ozone Transport Region includes all of the counties in the State” to “...For the State of Maine, the Ozone Transport Region includes all of Maine except for those portions of the State specifically removed from the OTR pursuant to CAA 176A.”

EPA has reviewed Maine’s February 24, 2021, submittal of a revision to Chapter 100 Definitions Regulation and determined that it represents an approvable revision to the version previously approved into the Maine SIP. The revised definition does not relieve the State of OTR obligations until the CAA 176A petition is approved by EPA. In the event EPA does not finalize its proposed approval of Maine’s CAA 176A request, no change to Maine’s status as being within the OTR will result from this SIP revision.

b. Chapter 113

The proposed Chapter 113 changes are as follows: 1) replace the previous section 1, Applicability, of the approved SIP, and 2) add new language codified as 3(E)(1)(c)(ii) in Maine’s Chapter 113 after 2(C)(3)(b) of Chapter 113 currently approved into the SIP. The updated section 1 is revised as follows: “The following types of stationary sources that seek to locate or expand within the geographical bounds of a nonattainment area, would have a significant impact in a nonattainment area, or seek to locate or expand within the Ozone Transport Region (concerning ozone precursor pollutants only) must obtain offset credits as provided for in this Chapter.” The amended section continues by discussing the four types of stationary sources impacted. Section 2 was updated by adding the following to the end of section 2(C)(3)(b): “Locating In an Ozone Attainment Area in the OTR: For a new major source or major modification subject to this Chapter locating in an ozone attainment area in the OTR, the source

from which the offset credits are being obtained must be located in the OTR and may be located within another ozone attainment area or within an ozone nonattainment area if approved by the Department and EPA. Sources locating in an ozone attainment area within the OTR must obtain VOC offset credits at a ratio of 1.15 to 1. A new major source or major modification subject to this Chapter locating in an ozone attainment area that does not have a NO_x waiver under section 182(f) of the Clean Air Act must obtain NO_x offset credits at a ratio of 1.15 to 1.”

EPA has reviewed Maine’s February 10, 2021, submittal of a revision to Chapter 113 Growth Offset Regulation and determined that it represents an approvable revision to the version previously approved into the Maine SIP. The revisions clarify that offsets must be obtained from within the OTR, which is significant in the event EPA approves Maine’s CAA section 176A request. Furthermore, the new language reinforces the notion that offsets being obtained from another ozone attainment or nonattainment area in the OTR require approval by EPA and ME DEP. The CAA and Maine’s existing SIP-approved Chapter 113 contain provisions that require a demonstration of contribution when offsets are allocated from areas outside that of the area where the new major source or major modification will be located. *See* CAA § 173(c)(1)(a) and (b) and Maine SIP, Chapter 113(3)(a). The addition of this new language clarifies the approval process needed in these instances. Lastly, the revised text clarifies how NO_x offset requirements should be applied in areas where a CAA section 182(f) NO_x waiver is not approved.¹

III. Description of Codification Issues in Maine’s SIP

The State of Maine’s regulations in Chapter 113 have been amended in the past under state law after they were originally approved into the SIP. Not all of those state law amendments were submitted to EPA as formal SIP revisions. Those “state-only” amendments resulted in new text

¹ Maine DEP has not sought a NO_x waiver for the 2015 ozone National Ambient Air Quality Standard (NAAQS), however, EPA has approved NO_x waivers under CAA section 182(f) previous ozone NAAQS. *See* 60 FR 66748 (December 26, 1995), 71 FR 5791 (February 3, 2006), and 79 FR 43945 (June 29, 2014). Nonetheless, without an approved NO_x waiver for the 2015 ozone NAAQS, all areas in Maine and within the OTR require NO_x offsets when subject to those requirements.

being added, existing text being rearranged, and, in some cases, changes to how Maine regulations are codified. Due to such “state-only” amendments to Chapter 113, there are instances where the state regulation being submitted for approval into the SIP at this time does not mesh precisely within the existing codification structure of the Maine SIP. As a matter of substantive legal requirements, however, the regulations approved into the Maine SIP, including those we are approving today, are harmonious, clear, and enforceable.

Below, we describe exactly how each definition and provision we are approving into Maine's SIP through this document will be incorporated into the SIP.

Section 1 of Chapter 113 will be replaced with a new Section 1(A)(1). This change is straightforward and does not present any codification issues.

In addition, to the change to Section 1, new provisions codified in state law as Section 3(E)(1)(c)(ii) will be added to the SIP and will be placed after already existing SIP provisions in section 2(C)(3)(b). The fact that this codification does not numerically follow a consistent pattern does not affect the substantive validity or enforceability of the newly incorporated provisions. As noted above, this codification issue arises as a result of changes to state law that were never submitted to EPA as SIP revisions.

Finally, the definition of Ozone Transport Region in Chapter 100 is being amended to reflect Maine’s petition to the EPA Administrator relating to the State’s interest in partially removing certain areas of the State from the Ozone Transport Region. Due to prior changes to Chapter 100 (Definitions) that were not approved into the SIP, the new definition of Ozone Transport Region will be codified as definition number 111. The prior definition of Ozone Transport Region in the SIP was codified as definition 104. Definition 104 will be removed from the SIP and the new definition of Ozone Transport Region will be added to the SIP as definition 111. We note that the current SIP has a definition of “Part 70 license” that is numbered 111. The new definition of Ozone Transport Region will be added to the SIP with the same number (111) as the definition

of “Part 70 license.” The fact that there will be two definitions in the SIP identified as definition 111 will not affect the substantive effect or the enforceability of either term.

IV. Proposed Action

EPA is proposing to approve the revision to Chapter 113 and the revision to Chapter 100 submitted by Maine on February 10 and 24, 2021, respectively. These SIP revisions satisfy the requirements of section 110(l) of the Clean Air Act because the plan revisions will not interfere with any applicable requirement concerning attainment or reasonable further progress or any other requirement of the Clean Air Act. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

V. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference revisions to Maine’s Chapter 100 Definitions Regulation, as effective on February 9, 2021, and Chapter 113 Growth Offset Regulation, as effective on January 14, 2019. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 22, 2021.

Deborah Szaro,
Acting Regional Administrator,
EPA Region 1.

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